



INTERIOR BOARD OF INDIAN APPEALS

Descendants and Heirs of Tulalip Allottee Behalh/Katrina Jim v.
Northwest Regional Director, Bureau of Indian Affairs

53 IBIA 131 (03/30/2011)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

DESCENDANTS AND HEIRS OF)	Order Docketing and Dismissing
TULALIP ALLOTTEE)	Appeal
BEHALH/KATRINA JIM,)	
Appellants,)	
)	
v.)	Docket No. IBIA 11-090
)	
NORTHWEST REGIONAL)	
DIRECTOR, BUREAU)	
OF INDIAN AFFAIRS,)	
Appellee.)	March 30, 2011

On March 17, 2011, the Board of Indian Appeals (Board) received an appeal from the Descendants and Heirs of Tulalip Allottee Behalh/Katrina Jim (Appellants),¹ seeking the Board's review of the alleged inaction of the Northwest Regional Director (Regional Director), Bureau of Indian Affairs (BIA), to provide a complete response to Appellants' Freedom of Information Act (FOIA) request, dated April 15, 2010.² This appeal was filed after Appellants submitted a request for action, dated January 17, 2011, to the Regional

¹ Appellants, who state that they collectively own 45 percent of the undivided interests in Tulalip Allotment 8-B, include Joan (Maurice) Williams, Charles Campbell, Fay Zackuse, Jewel Baker, Elaine Maurice, Sabrina Daniels, Theresa Maurice Baker, John Campbell, Joan Duplessis, William Zackuse, Jr., Teri (Starr) Foulkes, Carma Moses, Walter Campbell, and Joanna Spencer.

² Appellants' FOIA request seeks information that Appellants contend they need in order to effectively pursue a separate appeal, now pending before the Regional Director, in which Appellants argue that BIA made a series of decisions, including the purported sale of several undivided interests in Tulalip Allotment 8-B, without consulting Appellants and in violation of BIA's trust duty to them as beneficial owners.

Director under 25 C.F.R. § 2.8 (Appeal from inaction of an official),³ and the Regional Director failed to take action or issue a decision. We docket this appeal, but dismiss it because we lack jurisdiction.

The Board lacks jurisdiction over appeals from FOIA decisions or delays in responding to FOIA requests. *See Graven v. Assistant Secretary - Indian Affairs*, 53 IBIA 87, 88 n.3 (2011) (citing *Simpson v. Southern Plains Regional Director*, 38 IBIA 127 (2002)); *see also Midthun v. Rocky Mountain Regional Director*, 43 IBIA 258, 264 n.8 (2006) (the Board “does not have jurisdiction to consider appeals from denials under FOIA”). Instead, a separate process exists for FOIA appeals, *see* 43 C.F.R. §§ 2.28 - 2.33, including appeals based on an office’s failure to make a decision within the time limits prescribed by the FOIA regulations, *see id.* § 2.28(a)(3).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board docket this appeal but dismisses it for lack of jurisdiction.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

³ Section 2.8 provides, in relevant part, that when a request for action is made pursuant to § 2.8(a), the BIA official receiving the request “must either make a decision on the merits of the initial request within 10 days from receipt of the request for a decision or establish a reasonable later date by which the decision shall be made, not to exceed 60 days from the date of request.” 25 C.F.R. § 2.8(b).